

SENATE BILL 3724

By Herron

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 63 and Title 68, Chapter 1, relative to the
creation of the "Music Therapy Practice Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 63, is amended by adding the following language as a new chapter:

63-32-101. This chapter shall be known and may be cited as the "Music Therapy Practice Act".

63-32-102. As used in this chapter, unless the context otherwise requires:

- (1) "Board means the board of music therapists;
- (2) "Department" means the department of health;
- (3) "Division" means the division of health related boards in the department of health;
- (4) "Music therapist" means a person who is licensed to practice music therapy pursuant to this chapter;
- (5) "Music therapist assistant" means a person who meets the requirements of this chapter for licensure as a music therapist assistant and who performs music therapy procedures and related tasks that have been selected and delegated only by the supervising music therapist;
- (6) "Music therapy" means:
 - (A) The assessment of a client's emotional well-being, physical health, social functioning, communication abilities, and cognitive skills through responses to musical stimuli;

(B) The development and implementation of treatment plans, based on a client's assessed needs, using music interventions including music improvisation, receptive music listening, song writing, lyric discussion, music and imagery, music performance, learning through music, and movement to music; and

(C) The evaluation and documentation of the client's response to treatment;

(7) "Music therapy assistive personnel" means:

(A) "Other assistive personnel," which means other trained or educated health care personnel not defined in subdivision (8), who perform specific designated tasks related to music therapy under the supervision of a music therapist. At the discretion of the supervising music therapist, and if properly credentialed and not prohibited by any other law, "other assistive personnel" or "other support personnel" may be identified by the title specific to their training or education; and

(B) "Music therapy aide," inclusive of the terms "aide," "technician" and "transporter," which means a person trained by and under the direction of a music therapist who performs designated and supervised routine music therapy tasks;

(8) "On-site supervision" means the supervising music therapist or music therapist assistant must:

(A) Be continuously on-site and present in the department or facility where assistive personnel are performing services;

(B) Be immediately available to assist the person being supervised in the services being performed; and

(C) Maintain continued involvement in appropriate aspects of each treatment session in which a component of treatment is delegated to assistive personnel; and

(9) "Practice of music therapy" means the care and services provided by or under the direction and supervision of a music therapist who is licensed pursuant to this chapter.

63-32-103.

(a) There is created a board of music therapists, to consist of five (5) members appointed by the governor, each of whom shall be a resident of this state. Three (3) members of the board shall be licensed music therapists who have had at least five (5) years of experience in the actual practice or teaching of music therapy immediately preceding their appointment. One (1) member of the board shall be a licensed music therapist assistant who has had at least five (5) years of experience in the actual performance of music therapy procedures and related tasks or teaching of a music therapist assistant curriculum immediately preceding the appointment. One (1) member of the board shall be a person who is not engaged in the practice of music therapy and who is not professionally or commercially associated with the health care industry.

(c) Interested music therapy groups may submit to the governor a list of at least three (3) nominees for each appointment or vacancy to be filled pursuant to this section. The governor may make the appointment from the list.

(e) The board shall organize annually and select a chair and a secretary. Meetings shall be held as frequently as may be required.

(f) A quorum of the board shall consist of at least three (3) members.

(g) The division shall provide administrative, investigatory and clerical services to the board.

(h) All members of the board shall serve without compensation, but shall be eligible for reimbursement for travel expenses in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(i) All regular appointments to the board shall be for terms of three (3) years each. Each member shall serve until a successor is appointed. Vacancies shall be filled by appointment of the governor for the remainder of the unexpired term.

(j) The governor may, at the request of the board, remove any member of the board for misconduct, incompetence or neglect of duty.

(k) In making appointments to the board, the governor shall strive to ensure that at least one (1) member is sixty (60) years of age or older, that at least one (1) member is a racial minority and that the gender balance of the board reflects the gender balance of the state's population.

63-32-104.

(a) A music therapist licensed under this chapter is fully authorized to practice music therapy.

(b) No person shall practice or in any manner claim to be engaging in the practice of music therapy or designate as being a music therapist unless duly licensed as a music therapist in accordance with this chapter.

63-32-105.

(a) An applicant for licensure as a certified music therapist shall file an application as required by the board. A nonrefundable application fee and the

cost of the examination shall accompany the completed written application. Fees shall be established by rules promulgated by the board.

(b) After the application process has been completed, an applicant shall take the examination for music therapist licensure that covers current music therapy practice and technical application of music therapy services.

(c) Examinations shall be available within the state at such time and place as the board shall determine. The board shall determine the passing score.

(d) Applicants who do not pass the examination after the first attempt may retake the examination one (1) additional time without reapplication for licensure. This must occur within six (6) months of initial board approval to take the examination. Prior to being approved by the board for subsequent testing beyond two (2) attempts, individuals shall submit a new application with all applicable fees and demonstrate evidence satisfactory to the board of having successfully completed additional clinical training or course work as determined by the board and defined in the rules.

63-32-106.

(a) An applicant for licensure as a music therapist shall have the following qualifications:

- (1) Must be at least eighteen (18) years of age;
- (2) Be of good moral character;
- (3) Have completed the application process;
- (4) Be a graduate of a music therapist education program accredited by an accreditation agency approved by the board; and

(5) Have successfully passed an examination approved by the board. The examination shall be based on core competencies of music therapy administered by a public or private agency or institution and recognized by the board as qualified to administer the examination.

(b) An applicant for license as a music therapist assistant shall meet the following requirements:

(1) Must be at least eighteen (18) years of age;

(2) Be of good moral character;

(3) Have completed the application process;

(4) Be a graduate of a music therapist assistant education program accredited by an accreditation agency approved by the board; and

(5) Have successfully passed an examination approved by the board. The examination shall be based on core competencies of music therapy administered by a public or private agency or institution and recognized by the board as qualified to administer the examination.

(c) The board shall issue a license to a music therapist or music therapist assistant who has a valid unrestricted license from another United States jurisdiction in which such person, when granted such license, previously met all requirements as specified in subsections (a) and (b) and as further established by rules promulgated by the board.

(d) An applicant for licensure as a music therapist who has been educated outside the United States shall meet the following qualifications:

(1) Must be at least eighteen (18) years of age;

(2) Be of good moral character;

- (3) Have completed the application process;
- (4) Provide satisfactory evidence that the applicant's education is substantially equivalent to the requirements of music therapists educated in accredited educational programs as determined by the board. If the board determines that a foreign-educated applicant's education is not substantially equivalent, it may require completion of additional course work before proceeding with the application process;
- (5) Provide written proof that the school of music therapy education is recognized by its own ministry of education;
- (6) Provide written proof of authorization to practice as a music therapist without limitations in the country where the professional education occurred;
- (7) Provide proof of legal authorization to reside and seek employment in the United States or its territories;
- (8) Have the applicant's educational credentials evaluated by a board-approved credential evaluation agency;
- (9) Have passed the board approved English proficiency examinations, if the applicant's native language is not English;
- (10) Have participated in and completed an interim supervised clinical practice period prior to licensure; and
- (11) Have successfully passed the examination approved by the board.

(e) Notwithstanding the provisions of this section, if the foreign-educated music therapist applicant is a graduate of a professional music therapy education

program accredited by an agency approved by the board, the requirements in subdivisions (d)(4), (5), (8) and (10) may be waived.

(f) In determining the qualifications of an applicant for licensure as a music therapist or as a music therapist assistant, only a majority vote of the board shall be required.

63-32-107.

(a) Nothing in this chapter shall be construed as restricting a person licensed or certified under any other law of this state from engaging in the profession or practice for which the person is licensed or certified; provided, that the person does not claim to be a music therapist, a music therapist assistant or a provider of music therapy.

(b) The following persons shall be exempt from licensure as a music therapist or music therapist assistant under this chapter:

(1) A person who is pursuing a course of study leading to a degree as a music therapist or music therapist assistant in a professional education program approved by the board and is satisfying supervised clinical education requirements related to music therapy education;

(2) A music therapist or music therapist assistant while practicing in the United States armed services, United States public health service or veterans administration as based on requirements under federal regulations for state licensure of health care providers;

(3) A music therapist or music therapist assistant licensed in another United States jurisdiction or a foreign-educated music therapist credentialed in another country, performing music therapy as part of

teaching or participating in an educational seminar of no more than sixty (60) days in a calendar year; and

(4) A music therapist or music therapist assistant licensed in another United States jurisdiction who is temporarily performing music therapy for members of established athletic teams, athletic corporations or performing arts companies that are training, competing or performing in this state; provided, however, that a person performing music therapy in this state pursuant to this subdivision (b)(4) shall agree to use the secretary of state for service of process pursuant to title 20, chapter 2, part 2.

63-32-108. The board shall have the authority to:

(1) Evaluate the qualifications of applicants for licensure and provide for the examination of music therapists and music therapist assistants;

(2) Adopt passing scores for examination;

(3) Issue licenses to those who qualify under this chapter;

(4) Regulate the practice of music therapy by interpreting and enforcing the provisions of this chapter, including disciplinary action;

(5) Adopt and revise rules, as it deems necessary and appropriate, consistent with this chapter, for the discharge of its obligation under this section. Such rules, when lawfully adopted, shall have the effect of law;

(6) Establish requirements for assessing continuing competence of licensees; and

(7) Assess all license and registration fees.

63-32-109.

(a) A music therapist or music therapist assistant licensed under this chapter shall be subject to licensure renewal requirements as specified in the rules. An individual who fails to renew the license by the date of expiration shall not practice music therapy or function as a music therapist assistant in the state.

(b) Each licensee shall report to the division a name change and changes in business and home address within thirty (30) days of the change.

(c) Any person licensed by the board to practice in this state who has retired or may retire from such practice in this state is not required to register as required by this chapter if such person files with the board an affidavit on a form to be furnished by the board, which affidavit states the date on which the person retired from practice and any other facts as the board considers necessary that tends to verify such retirement. A person who thereafter reengages in practice in this state shall apply for licensure with the board as provided by this chapter and shall meet such continuing education requirements that are established by the board, except for good and sufficient reasons as determined by the board.

(d) Any person licensed by the board may place their license on inactive status by filing the proper forms with the board and by paying a biennial fee in accordance with rules. If the person thereafter reengages in active practice in this state, such person shall apply for relicensure with the board as provided by this chapter and shall meet continuing education requirements as established by the board, except for good and sufficient reasons as determined by the board.

63-32-110.

(a) Reinstatement of a lapsed license following a renewal deadline shall require payment of a renewal fee, a late renewal penalty fee and a reinstatement fee, in accordance with rules promulgated by the board.

(b) Reinstatement of a license that has lapsed for more than three (3) consecutive years requires reapplying for a license and payment of fees in accordance with board rules. The individual shall successfully demonstrate to the board competency in the practice of music therapy or, shall serve an internship under a restricted license or take remedial courses as determined by the board, or any combination of the preceding, at the board's discretion. The board may also require the applicant to take an examination.

(c) When any license holder fails to renew and pay the biennial renewal fee within sixty (60) days after renewal becomes due, as provided in this section, the license of such person shall be administratively revoked at the expiration of the sixty (60) days after the renewal was required, without further notice or hearing. Any person whose license is administratively revoked, as provided in this subsection (c), may make application in writing to the board for the reinstatement of the license; and, upon good cause being shown, the board, in its discretion, may reinstate the license upon payment of all required fees.

63-32-111.

(a) Music therapists shall use the letters "MT" in connection with their name or place of business to denote licensure under this chapter.

(b) It is unlawful for any person or for any business entity, its employees, agents or representatives to use in connection with such person's name or the name or activity of the business the words "music therapy," "music therapist," "registered music therapist," "licensed music therapist," or any other words, abbreviations or insignia indicating or implying directly or indirectly that music therapy is provided or supplied, including the billing of services labeled as music

therapy, unless such services are provided by or under the direction of a music therapist licensed in accordance with this chapter.

(c) A music therapist assistant shall use the letters “MTA” in connection with the person's name to denote licensure.

(d) No person shall use the title “music therapist assistant” or use the letters “MTA” in connection with the person's name or any other words, abbreviations or insignia indicating or implying, directly or indirectly, that the person is a music therapist assistant unless the person is licensed as a music therapist assistant in accordance with this chapter.

63-32-112.

(a) Music therapists are responsible for the patient care given by music therapist assistants, assistive personnel and students on clinical affiliations under their supervision. The music therapist may delegate to the music therapist assistant, assistive personnel and clinical students selected acts, tasks or procedures that fall within the scope of their education or training.

(b) Music therapist assistants shall at all times be under the supervision of a licensed music therapist and as further set forth in the rules promulgated by the board.

(c) Music therapy aides, other assistive personnel and clinical students shall at all times perform patient care activities under the on-site supervision of a licensed music therapist or music therapist assistant.

(d) Music therapist students and music therapist assistant students shall at all times be under the supervision of a music therapist as further set forth in the rules promulgated by the board.

63-32-113. The board has the power, and it shall be its duty, to deny, suspend or revoke the license of, or to otherwise lawfully discipline, a licensee who is guilty of violating this chapter or is guilty of the following acts or offenses:

(1) Practicing music therapy in violation of this chapter or any rule or written order adopted by the board;

(2) Practicing or offering to practice beyond the scope of music therapy practice;

(3) Making false or misleading statements or representations, being guilty of fraud or deceit in obtaining admission to practice or being guilty of fraud or deceit in the licensee's practice;

(4) Engaging in the performance of substandard care by a music therapist due to ignorance, incompetence or a deliberate or negligent act or failure to act, regardless of whether actual injury to the patient is established;

(5) Engaging in the performance of substandard care by a music therapist assistant, which includes exceeding the authority to perform the task selected and delegated by the supervising music therapist, regardless of whether actual injury to the patient is established;

(6) Inadequately supervising or delegating duties that exceed the scope of practice for assistive personnel in accordance with this chapter and rules promulgated by the board;

(7) Conviction of a felony or any offense involving moral turpitude in the courts of this state or any other state, territory or country. "Conviction," as used in this subdivision (7), includes a finding or verdict of guilt or a plea of nolo contendere;

(8) Practicing as a music therapist or working as a music therapist assistant when physical or mental abilities are impaired by the use of controlled substances, other habit-forming drugs, chemicals or alcohol;

(9) Disciplinary action against a person licensed to practice as a music therapist or music therapist assistant by another state or territory of the United States for any acts or omissions that would constitute grounds for discipline of a person licensed in this state. A certified copy of the initial or final order or other equivalent document shall constitute prima facie evidence of a violation of this section and be sufficient grounds upon which to deny, restrict or condition licensure or renewal and/or discipline a person licensed in this state;

(10) Engaging in sexual misconduct. "Sexual misconduct," for the purpose of this section, includes:

(A) Engaging in or soliciting sexual relationships, whether consensual or non-consensual, while a music therapist or music therapist assistant/patient relationship exists; and

(B) Making sexual advances, requesting sexual favors and engaging in other verbal conduct or physical conduct or physical contact of a sexual nature with patients.

(11) Directly or indirectly requesting, receiving or participating in the dividing, transferring, assigning, rebating or refunding of an unearned fee or profiting by means of a credit or other valuable consideration, such as an unearned commission, discount or gratuity in connection with the furnishing of music therapy services. Nothing in this subdivision (11) prohibits the members of any regularly and properly organized business entity recognized by law and comprised of music therapists from dividing fees received for professional

services among themselves as they determine necessary to defray their joint operating expenses. Music therapists employed by or contracting with a physician, physician group, as defined in accordance with the federal Physician Self-Referral Law, codified in 42 U.S.C. § 1395nn, or entity primarily owned by physicians and receiving wages or other compensation or benefits pursuant to the employment or contract shall not be deemed to be in violation of this chapter solely by virtue of the employment or contract and shall not be subject to licensure denial, suspension, revocation or any other disciplinary action or other penalty described under this chapter solely by virtue of the employment or contract. This subdivision (11) shall not be interpreted in such a way as to create a prohibition on the corporate practice of any health care professional where no such prohibition previously existed;

(12) Failing to adhere to standards of ethics of the music therapy profession;

(13) Charging unreasonable or fraudulent fees for services performed or not performed;

(14) Making misleading, deceptive, untrue or fraudulent representations in violation of this chapter, or otherwise, in practice of the profession;

(15) Being under a current judgment of mental incompetency rendered by a court of competent jurisdiction;

(16) Aiding or abetting a person not licensed in this state who directly or indirectly performs activities requiring a license;

(17) Failing to report to the board any act or omission of a licensee, applicant or any other person who violates this chapter;

(18) Interfering with, or refusing to cooperate in, an investigation or disciplinary proceeding, including willful misrepresentation of facts or by the use of threats or harassment against any patient or witness to prevent the patient or witness from providing evidence in a disciplinary proceeding or any legal action;

(19) Failing to maintain patient confidentiality without prior written consent or unless otherwise required by law;

(20) Failing to maintain adequate patient records that contain a minimum of an evaluation of objective finding, a music therapy treatment diagnosis, the plan of care including desired outcomes, the treatment record, a discharge plan including results of intervention and sufficient information to identify the patient;

(21) Promoting unnecessary devices, treatment intervention or service for the financial gain of the practitioner or of a third party;

(22) Providing treatment intervention unwarranted by the condition of the patient, nor shall the licensee continue treatment beyond the point of reasonable benefit;

(23) A violation or attempted violation, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate this chapter or any lawful order of the board issued pursuant thereto or any criminal statute of the state; or

(24) Payment or acceptance of commissions, in any form or manner, on fees for professional services, references, consultations, pathological reports, prescriptions or on other services or articles supplied to patients.

63-32-114. The board may, upon proof of the violation of this chapter, take the following disciplinary actions singly or in combination:

(1) Deny an application for a license to any applicant who applies for the same through reciprocity or otherwise;

- (2) Permanently or temporarily withhold issuance of a license;
- (3) Suspend, limit or restrict a previously issued license for such time and in such manner as the board may determine;
- (4) Issue a letter of reprimand;
- (5) Reprimand or take such action in relation to disciplining an applicant or licensee, including, but not limited to, informal settlements and letters of warning as the board, in its discretion, may deem proper;
- (6) Revoke a license;
- (7) Refuse to issue or renew a license; or
- (8) Impose civil penalties for violation of this chapter pursuant to § 63-1-134. In addition, the board may, in its discretion, assess and collect the reasonable costs incurred in a disciplinary hearing when action is taken against a person's license.

63-32-115.

(a) All proceedings for disciplinary action against a licensee shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) The board retains jurisdiction to modify or refuse to modify, upon request of any party, any of its orders issued pursuant to this section.

63-32-116.

(a) A person commits a Class B misdemeanor if the person engages in an activity requiring a license issued according to this chapter and who fails to obtain the required license, who violates any other provision of this chapter or who uses any word, title, or representation implying that the person is licensed to engage in the practice of music therapy. A person claims to be a music therapist

when using a title, letters or any description of services that incorporates one (1) or more of the terms, designations or abbreviations specifically restricted under § 63-32-111.

(b) The board may authorize an investigation of any person to the extent necessary to determine if the person is engaged in the unlawful practice of music therapy.

(c) The board may, through the office of the attorney general and reporter, apply for injunctive relief in any court of competent jurisdiction to enjoin any person from committing an act in violation of this chapter. Injunctive proceedings are in addition to, and not in lieu of, all penalties and other remedies prescribed in this chapter.

(d) A person who aids or requires another person to directly or indirectly violate this chapter or rules, who permits the person's license or a license issued by this board to be used by any person other than the licensee or who acts with the intent to violate or evade this chapter or rules is subject to a civil penalty of not more than one thousand dollars (\$1,000) for each violation.

63-32-117.

(a) Music therapists shall disclose in writing any financial interest in products they endorse and recommend to their patients.

(b) The licensee has the responsibility to ensure that the patient has knowledge of freedom of choice in services and products.

(c) Information relating to the music therapist-patient relationship is confidential and may not be communicated to a third party not involved in that patient's care without the prior written consent of the patient. The music

therapist-patient confidentiality does not extend to cases in which the music therapist has a duty to report information as required by law.

(d) Any person may submit a complaint regarding any licensee or any other person potentially in violation of this chapter. Confidentiality shall be maintained subject to law.

(e) The department shall keep all information relating to the receiving and investigation of complaints filed against licensees confidential until the information becomes public record as required by law.

(f) Each licensee shall display a copy of the licensee's license or current renewal verification in a location accessible to public view at the licensee's place of employment.

SECTION 2. Tennessee Code Annotated, Section 4-29-235(a), is amended by adding the following as a new, appropriately designated subdivision:

() Board of music therapists, created by § 63-32-103

SECTION 3. Tennessee Code Annotated, Section 68-1-101(a)(8), is amended by adding the following as a new, appropriately designated subdivision:

() Board of music therapists.

SECTION 4. The board is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

SECTION 5. For the purpose of promulgating rules and regulations this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2013, the public welfare requiring it.